

CONSTRUCTION MANAGEMENT AGREEMENT FOR NORTH & SOUTH ENVIRONMENTAL ENHANCEMENT AREAS AT FLOYD LAMB PARK

THIS AGREEMENT is made and entered into this _____ day of _____, by and between the CITY OF LAS VEGAS, a municipal corporation within the State of Nevada (herein the "City") whose address is 400 Stewart Avenue, Las Vegas, Nevada 89101, and fax number is (702) 382-3232, and VTN Nevada, (the "Consultant"), a Corporation, whose address is 2727 South Rainbow Boulevard, Las Vegas, Nevada 89146, and fax number is (702) 247-4020.

WITNESSETH:

WHEREAS, the City intends to construct the North & South Environmental Enhancement Areas at Floyd Lamb Park (herein the "Project"); and

WHEREAS, the Consultant is properly licensed pursuant to NRS Chapter 623, 623A, 624, or 625, whichever is legally required for the services to be provided within the State of Nevada, and possesses the special knowledge, skills and expertise to perform the services hereinafter set forth within the time required under this Agreement; and

WHEREAS, with respect to the Project, the City intends to retain a qualified and licensed contractor (herein the "Contractor") to construct the Project having been designed and engineered by professional architects and engineers; and

WHEREAS, the City desires to retain the services of a qualified consultant who will be responsible for providing the services requested by the City which may include, without limitation, review of documents (including submittals) prepared by the Contractor, contract administration, change order negotiations and execution, and monitoring and documenting construction progress in connection with the Project;

NOW, THEREFORE, in consideration of the above premises, the parties hereto agree to the following terms, conditions and covenants set forth in Sections One through Ten hereof:

SECTION ONE CONSULTANT RESPONSIBILITIES

1.01 *Description of Consultant's Services.* For the compensation set forth in Section Seven, the Consultant hereby agrees to perform the basic services set forth in the Scope of Services, Exhibit "A" attached hereto and incorporated herein as a part of this Agreement and, if so requested, the additional services set forth in the Additional Compensation, Exhibit "E" attached hereto and incorporated herein as a part of this Agreement and to provide the submittals described in the Required Submittals Exhibit "B," attached hereto.

1.02 *Performance Standards.* In performing the services set forth in this Agreement, the Consultant shall follow the practices consistent with the generally accepted standards in the profession of the services being provided to the City pursuant to this Agreement.

1.03 *Document Review.* The Consultant shall be responsible for reviewing each document prepared by the Consultant and its subconsultants for the purpose of ensuring that such documents are technically sound, in conformance with applicable federal, state and local laws and other regulations, and do not violate or infringe upon any patent rights.

1.04 *Waiver.* The City's approval of any documents or services furnished by the Consultant shall not in any way relieve the Consultant of responsibility for the professional and technical accuracy of its documents or services. The City's review, approval, acceptance or payment for any of the Consultant's services shall not be construed to operate as a waiver of any rights enjoyed by the City under this Agreement or of any cause of action arising out of the performance of this Agreement. The Consultant shall remain liable for any damages to the City caused by the Consultant's negligent act or omission committed in the performance of this Agreement.

1.05 *Designation of Consultant's Representative.* The Consultant's representative is the individual identified in the Key Personnel List, Exhibit "F" attached hereto (the "Consultant Representative") to act in that capacity, who shall be responsible for the services required under this Agreement. The services specified by this Agreement shall be performed by the personnel identified in the Key Personnel List provided that such associates and employees perform under the personal supervision of the Consultant Representative.

If any person or subconsultant who is expected to provide any of the services required under this Agreement is objectionable to the City for any reason, the Consultant shall, without additional compensation, replace such person or subconsultant with someone acceptable to the City.

If the Consultant's personnel are unable to complete their responsibilities for any reason under this Agreement, or the Consultant desires for any reason to substitute personnel assigned to the Project, the Consultant agrees to obtain the approval of the City for the substitution. The City shall not unreasonably deny approval unless the City adjudges the substitution not be in the interest of the City or the Project.

If the Consultant fails to make an acceptable replacement within thirty (30) days, the City may terminate this Agreement for default as provided in Section 10.03 of this Agreement.

1.06 Correspondence Review. The Consultant shall furnish the City Representative copies of each correspondence, if any, sent to the Contractor or any other contractor involved with the Project, and to any regulatory agencies, for approval and review prior to mailing such correspondence.

1.07 Cooperation with the City. The Consultant agrees that its officers, associates, employees and subconsultants will cooperate with the City in providing the services under this Agreement and will be, with advance notice, available for consultation with the City at such reasonable times as to not conflict with the City's other responsibilities.

SECTION TWO CITY RESPONSIBILITIES

2.01 City Representative. The Director of Public Works or his authorized representative identified in the Key Personnel List is hereby designated as the City's representative (the "City Representative") with respect to this Agreement. The City Representative shall have complete authority to transmit instructions, receive information, interpret and define the City's policies and decisions with respect to the services of the Consultant. The City Representative is not authorized to change or waive any of the provisions set forth in Sections 1.01 through 10.24 of this Agreement.

2.02 Review of Consultant's Services and Documents. The services to be performed by the Consultant shall be subject to periodic review by the City Representative. To prevent an unreasonable delay in the Project, the City Representative will endeavor to examine and comment in writing on the documents furnished by the Consultant including, without limitation, test results, evaluations, and reports within twenty-one (21) days of receipt of such documents, unless the Contract provides for a different review time with respect to the document.

2.03 Access to Records. The City shall, without charge, furnish a copy to, or make available for examination or use by, the Consultant, as it may request, any documents and data which the City has available including, without limitation, reports, maps, plans, specifications, surveys, records, ordinances, codes, regulations, and other documents related to the services required under this Agreement. The City shall assist the Consultant in obtaining data and documents from public agencies and from private citizens and business firms whenever the City determines that such material is necessary for the completion of the services required by this Agreement.

2.04 Cooperation with Consultant. The City agrees that its officers and employees will cooperate with the Consultant in the performance of this Agreement and will be, with advance notice, available for consultation with the Consultant at such reasonable times as to not conflict with the Consultant's other responsibilities. The City shall provide access to the Consultant on to the Project site as may be required to perform the services under this Agreement.

SECTION THREE CHANGES TO CONSULTANT'S SERVICES

3.01 Requested Changes. The City may at any time, by written order, make a change in the services to be performed by the Consultant under this Agreement.

3.02 Adjustment of Compensation. If the change requested by the City causes an increase or decrease in the cost or time required to perform any of the services required under this Agreement, an equitable adjustment shall be made in the compensation to be paid to the Consultant under Section Seven, or in the performance schedule under Section Eight, or both, and this Agreement shall be modified in writing accordingly. Each claim for adjustment under this Section must be asserted in writing within thirty (30) days from the date of receipt by the Consultant of written notification of the change, unless the City grants in writing an extension. Provided proper notice has been given to the City as required herein, the claim for an adjustment shall be handled pursuant to the provisions of 10.20B and 10.20C of this Agreement. The failure to provide notification of the claim within the time required herein shall constitute a waiver of the right to seek any equitable or legal adjustment in compensation with respect to that change.

SECTION FOUR ADDITIONAL SERVICES OF CONSULTANT

4.01 Additional Services. The Consultant shall provide the additional services described in the Additional Compensation if, and only if, so requested in writing by the City. Payment for the additional services will be made to the Consultant in accordance with Section Seven of this Agreement.

4.02 Attendance at Meetings or Public Hearings. The Consultant shall notify the City in advance of any additional costs which may be incurred prior to attending any meetings or public hearings as may be necessary in connection with the services performed by the Consultant under this Agreement.

SECTION FIVE SUBCONSULTANT AGREEMENT

5.01 Subconsultant Provisions. If, with the approval of the City as required pursuant to Section 10.07, the Consultant enters into an agreement with a subconsultant for the performance of any of its obligations under this Agreement, the Consultant agrees to include in each subconsultant agreement a provision that:

(i) the Consultant agrees to pay the subconsultant when paid by the City for that portion of the services provided to the City and that no liability arises on the part of the Consultant for payment of the subconsultant services until payment has been made by the City. If the City has paid the Consultant for the subconsultant services, the subconsultant's only recourse is against the Consultant and not against the City, either through the institution of legal or equitable action or the attachment of any lien,

(ii) the subconsultant shall have no more rights against the City than that of the Consultant,

(iii) the subconsultant agrees to be bound by the terms, conditions and obligation of this Agreement unless the City has approved any deviation, change or modification in writing, and

(iv) unless otherwise approved in writing by the City Representative, the subconsultant shall obtain and maintain professional liability insurance (Errors and Omissions coverage) in connection with the subconsultant services in an amount equal to that required of the Consultant in this Agreement.

SECTION SIX TERM OF AGREEMENT

6.01 Term. This Agreement shall commence on the day it is approved by the City (which date shall be inserted in the introductory paragraph of this Agreement) and shall remain in force and effect until the Project is completed unless terminated earlier pursuant to Section 10.02 or 10.03 of this Agreement. Such termination shall not release either party from any of its continuing obligations under this Agreement.

6.02 Disputes. This Section shall not be construed to preclude the filing of any dispute arising out of the performance of this Agreement or in connection with the subject matter hereof, nor shall this Section be construed to change the date or the time on which a cause of action arising out of the performance of this Agreement or in connection with the subject matter hereof, would otherwise accrue under the statutes of limitation or doctrines of law.

SECTION SEVEN COMPENSATION AND TERMS OF PAYMENT

7.01 Compensation: Basic Services. For the services to be performed by the Consultant under this Agreement and set forth in the Scope of Services, the City agrees to pay the Consultant the hourly fee in the amount identified in the Fee Breakdown, **Exhibit "D"** attached hereto, pursuant to invoices submitted in accordance with Section 7.06 of this Agreement.

7.02 Compensation: Additional Services. For any services not set forth in the Scope of Services, the City shall pay to the Consultant either a lump sum fee, or an hourly fee based on the hourly labor rate schedule set forth in the Additional Compensation, **Exhibit "E"** attached hereto, whichever is agreed to by the parties, provided prior written approval for such services is given by the City Representative.

7.03 Compensation: Reimbursable Expenses. The Consultant agrees that all of its direct and indirect expenses are included in the fee for Basic Services and the agreed upon compensation for any Additional Services, except as may be specifically allowed for reimbursable expenses as part of the Additional Compensation.

7.04 Compensation: Overtime. The Consultant agrees that all overtime will be reimbursed at 1.5 times the actual wage paid plus applicable tax. Under no circumstances will the City of Las Vegas pay a multiplier on overtime.

7.05 Compensation: Subconsultants. The Consultant agrees that the markup for subconsultant work shall not exceed five (5) percent.

7.06 Payment Invoicing. The Consultant may submit an invoice for payment for the services provided by the Consultant based on the manner or method of payment set forth in the Fee Breakdown. The City Representative will notify the Consultant of any problems regarding the invoice within fourteen (14) days from receipt thereof. If no response is received from the City Representative within the aforementioned period of time, the Consultant may expect payment within a period of (60) days from the date of receipt by the City. If payment has not been received within the sixty (60) days, the Consultant agrees to contact the City Representative to resolve the problem causing the delay. If resolution of the delay is not satisfactory to the Consultant, the Consultant may submit a claim pursuant to Section 10.20A of this Agreement.

7.07 Right to Off-Set. The City Representative may subtract or offset from any unpaid invoice from the Consultant any claims which the City may have for failure of the Consultant to comply with the terms, conditions or covenants of this Agreement, or any damages, costs and expenses caused by, resulting from, or arising out of the negligent act or omission of the Consultant in the performance of the services under this Agreement including, without limitation, any error or deficiency in the report or other documents prepared by the Consultant. The City Representative shall provide a written statement to the Consultant of the off-set which has been subtracted from any payment to the Consultant along with appropriate documentation and receipts, if any, and a description of the failure, error or deficiency attributed to the Consultant. If the Consultant disputes the right or amount of the off-set made by the City, the Consultant may file a claim pursuant to Section 10.20 of this Agreement.

7.08 Final Payment. Upon completion of the services required under this Agreement, and acceptance thereof by the City (which acceptance will not be unreasonably withheld), the Consultant will, within sixty (60) days of the City's acceptance, be paid the balance of any money due for such services.

SECTION EIGHT PERFORMANCE SCHEDULE

8.01 Performance Schedule. The Consultant shall perform and complete the services required under this Agreement according to the schedule (the "Performance Schedule") set forth in the Schedule of Performance, Exhibit "C" attached hereto. If the performance of services is delayed or submittals are not delivered in the time period as outlined in the Performance Schedule, the Consultant shall notify the City Representative in writing of the reasons for the delay and include a plan which brings the Consultant's performance into compliance with the Performance Schedule.

SECTION NINE AUDIT: ACCESS TO RECORDS

9.01 Records. The City shall have the right to audit the Consultant's books, records and other documents directly pertinent to the performance of this Agreement. The Consultant agrees to maintain books, records and other documents directly pertinent to performance of this Agreement in accordance with generally accepted accounting principles and practices. The Consultant shall also maintain the financial information and data used to prepare or support the invoices submitted to the City. Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards, procedures and guidelines of the City, or its designated representative. The City, or its duly authorized representatives, shall have access to such books, records, and documents for the purpose of inspection, audit and copying. The Consultant will provide proper facilities for such access and inspection.

9.02 Disclosure. The Consultant shall be afforded the opportunity for an audit entrance and exit conference and an opportunity to comment and submit any supporting documentation on the pertinent portions of the draft audit report, and the final audit report will include the written comments, if any, of the Consultant.

9.03 Period of Maintenance. The books, records and other documents under Sections 9.01 and 9.02 of this Agreement shall be maintained for three (3) years after the date of the final payment for the services under this Agreement. In addition, those records and other documents which relate to any arbitration, litigation or the settlement of any claim arising out of this Agreement, or to which an audit exception has been taken, shall be maintained and made available until three (3) years after the date that the arbitration, litigation or exception has been resolved.

9.04 Subcontract Provisions. The Consultant agrees to include Sections 9.01 through 9.03 of this Agreement in all its subcontracts directly related to performance of services specified in this Agreement which are in excess of \$10,000.

SECTION TEN MISCELLANEOUS PROVISIONS

10.01 Suspension. The City may suspend, without cause, the performance by the Consultant under this Agreement for such period of time as the City, in its sole discretion, may prescribe by providing written notice to the Consultant. The suspension shall be effective as of the date set forth in the written notice. With such suspension, the City agrees to pay to the Consultant the amount of compensation earned as of the effective date of suspension less all previous payments. The Consultant shall not provide any further services under this Agreement after the effective date of suspension until otherwise notified in writing by the City. In no event shall the City be liable to the Consultant for services in excess of the percentage completed at the time of suspension.

If, after notice to resume performance has been given by the City, the suspension was for a period in excess of ninety (90) days, which has resulted in an increase in the performance of the Agreement to the Consultant and:

- (i) the Consultant was not a contributing cause for the suspension,
- (ii) the Consultant has not received an equitable adjustment under another provision of this Agreement, and
- (iii) the Consultant could not mitigate the increase in the performance cost,

then the Consultant's fee shall be reviewed by the City and, if justified, equitably adjusted to provide for any additional expenses resulting from the suspension.

10.02 Termination for Convenience. The City reserves the right to terminate this Agreement without cause or default on the part of the Consultant with ten (10) days' prior written notification to the Consultant served pursuant to Section 10.18 of this Agreement. In the event of termination, without cause or default, the City agrees to pay to the Consultant the reasonable value for the services performed as of the date that notification of termination is received by the Consultant. In no event shall the City be liable to the Consultant for services in excess of the percentage completed at the time of termination.

10.03 Termination for Cause or Other Resolution.

A. Default. The occurrence of any of the following events shall constitute a default by the Consultant hereunder (herein "Event of Default"). If, during the term of this Agreement, the Consultant:

- (i) defaults in the due observance and performance of any term, condition or covenant contained in this Agreement,
- (ii) (a) voluntarily terminates operations or consent to the appointment of a receiver, trustee or liquidator of the Consultant for all or a substantial portion of its assets, (b) is adjudicated bankrupt or insolvent or files a voluntary petition in bankruptcy, or admits in writing to the inability to pay its debts as they become due, (c) make a general assignment for the benefit of creditors, (d) file a petition or answer seeking reorganization or an arrangement with creditors or take advantage of any insolvency law, or (e) if action shall be taken by the Consultant for the purpose of effecting any of the foregoing,
- (iii) allows any warrant, execution or other writ to be issued or levied upon any property or assets of the Consultant which continues unvacated and in effect for a period of thirty (30) days, or
- (iv) fails, in the judgment of the City, to provide the services hereunder properly and with proper dispatch in accordance with the time schedule set forth in this Agreement,

and the default continues five (5) days after written notice is given to the Consultant pursuant to Section 10.18.

B. **City's Rights.** Upon the occurrence of an Event of Default, and without prejudice to any other right or remedy it may have at law or equity, the City may:

(i) terminate this Agreement, suspend payment of all pending invoices otherwise due to the Consultant hereunder, and finish this Agreement by such means as deemed appropriate by the City, reserving the right to deduct from any balance due Consultant the cost of completing this Agreement. In the event the cost of finishing the Consultant's performance of this Agreement exceeds the balance due the Consultant, the excess shall be paid by the Consultant to the City within five (5) days of invoicing by the City,

(ii) terminate this Agreement, and the obligations imposed hereunder, including the obligation of any further payment for the services of the Consultant except for the reasonable value for the services performed to the date of termination, or

(iii) continue with performance by the Consultant and serve within a reasonable time after completion of the Agreement a request to arbitrate the Event of Default as a claim or dispute pursuant to the arbitration procedure set forth in Section 10.20.

In the event that the City elects to implement (i) above, the costs and expenses of completing this Agreement shall be computed and audited by the City's designated representative. The audit shall be conducted in accordance with generally accepted accounting principles and the cost thereof shall be paid by the Consultant.

10.04 **Ownership of Documents.**

A. **Architectural Works.** To the extent that the Consultant's services involves the design of an architectural work as defined herein, the Consultant shall retain all common law and statutory rights of ownership, including copyrights, to the drawings and specifications prepared by the Consultant for this Project. The Consultant is deemed to be the author of the drawings and specifications as instruments of service to the City. Notwithstanding the foregoing, the Consultant hereby grants to the City the right to use (including the right of reproduction and use in the creation of new documents) the drawings and specifications for the purpose of completing the Project or for any subsequent maintenance, repair, renovation, remodeling or addition thereto. The rights granted herein to the City shall extend and include any new consultant which the City may retain for the aforementioned purposes. The Consultant hereby releases the City, and any new consultant retained by the City for the aforementioned purposes, from any and all claims in connection with the use or reproduction of the drawings and specifications. The Consultant agrees to execute such documents reasonably deemed necessary by the City to implement the rights granted to the City pursuant to this subsection.

B. **Other Works.** To the extent that the Consultant's services does not involve the design of an architectural work, the City shall have all common law and statutory rights of ownership, including copyrights, to the plans, drawings, specifications and other documents (including, without limitation, design concepts and sketches, test results, evaluations, reports and studies, excepting any proprietary forms, templates, and checklists specifically listed for City ownership exclusion elsewhere in this Agreement) (collectively herein the "Documents") prepared or assembled by the Consultant, or any of its subconsultants, for this Project. The Consultant hereby releases the City, and any new consultant retained by the City from any and all claims in connection with the use or reproduction of the Documents. The Consultant agrees to execute such documents reasonably deemed necessary by the City to implement the rights granted to the City pursuant to this subsection. The Consultant shall be entitled to retain a reproducible copy of the documents furnished to the City.

C. **Definition of Architectural Work.** For purposes of this Agreement, "architectural work" shall have the same definition as set forth in Architectural Works Copyright Protection Act of 1990, P. L. 101-650, Title VII, Section 70 et. seq.

D. **Delivery of Documents.** In the event of the completion, suspension or termination of this Agreement, the City shall have the right to require delivery of any and all of the plans, drawings, specifications, and all other documents (including, without limitation, design concepts and sketches, test results, evaluations, reports and studies), including the magnetic or electronic media of the aforementioned documents, not in the possession of the City.

E. **Confidentiality.** The plans, drawings, specifications and other documents (including, without limitation, design concepts and sketches, test results, evaluations, reports and studies) (including the magnetic or electronic media of the aforementioned documents) which are prepared or assembled by the Consultant, or its subconsultants, under this Agreement shall not be made available to any individual or organization without the prior written consent of the City. Except for marketing pamphlets and submittals to clients, the Consultant shall not publish, submit for publication, or publicly display the Project without the written consent of the City. The obligations of confidentiality shall survive the termination of this Agreement.

F. **Contractual Rights.** Notwithstanding the provisions of 10.04 A above, the City is hereby licensed to use all design concepts developed by the Consultant and subconsultants under this Agreement, including the right to construct derivative works of the Project, and to use the design concepts for other projects of the City. The design concepts include, but are not limited to, the form, aesthetic appeal, site layout, the arrangement and composition of spaces and elements, the use of colors and materials, system designs, construction methods and interior design.

10.05 Insurance. The Consultant shall procure and maintain, at its own expense, during the entire term of the Agreement, the following insurances:

A. **Workmen's Compensation Insurance.** This insurance shall protect the Consultant and the City from employee claims based on job-related sickness, disease, or accident.

B. **Comprehensive General Liability Insurance.** This insurance shall protect the Consultant, its agents and vehicles used to provide the services required under this Agreement from claims of personal injury (including death) and property damage. Such coverage shall be in a minimum amount of \$1,000,000 for the period of time covered by this Agreement. The Consultant's general liability insurance policies shall be endorsed to include the City as an additional insured.

C. **Professional Liability Insurance (Errors and Omissions Coverage).** This insurance shall protect the Consultant from claims arising out of performance of professional services caused by a negligent act, error, or omission for which the insured is legally liable. Such coverage shall be in a minimum amount of \$1,000,000 for the period of time covered by this Agreement.

D. **Cancellation or Modification of Coverage.** The Consultant's Comprehensive General Liability and Professional Liability Insurance Policies shall automatically include or be endorsed to cover the Consultant's contractual liability to the City under this Agreement, and with respect to its Comprehensive General Liability Policy, to waive subrogation against the City, its officers, agents, servants and employees. The policies shall provide that the City will be given thirty (30) days' notice in writing of any cancellation of, or material change in, the policies.

E. **Certificates and Endorsements.** The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer and licensed by the State of Nevada. All deductibles and self-insured retentions shall be fully disclosed in the Certificate of Insurance. No deductible or self-insured retention may exceed \$25,000 without the written approval of the City. Certificates indicating that such insurance is in effect shall be delivered to the City before any services are provided under this Agreement.

F. **Period of Coverage.** If the insurance coverage is underwritten on a "claims made" basis, the retroactive date shall be prior to or coincident with the date of this Agreement and the Certificate of Insurance shall state that coverage is "claims made" and the retroactive date. Upon availability, the Consultant shall maintain coverage for the duration of this Agreement and for two years following completion of this Agreement. The Consultant shall provide the City annually a Certificate of Insurance as evidence of such insurance.

10.06 Indemnity. Notwithstanding any of the insurance requirements set forth in Section 10.05, and not in lieu thereof, the Consultant shall defend, indemnify and hold the City, its officers, employees and agents (herein the "Indemnitees"), harmless from any and all claims (including, without limitation, patent infringement and copyrights claims), damages, losses, expenses, suits, actions, decrees, judgments, arbitration awards or any other form of liability (including, without limitation, reasonable attorney fees and court costs) (collectively herein the "Claims") which the Indemnitees may suffer as a result of, by reason of, or as a consequence of, the negligent errors, omissions, recklessness, intentional misconduct of the Consultant, its subcontractors, agents or anyone employed by the Consultant, its subcontractors or agents, in the performance of this Agreement.

As part of its obligation hereunder, the Consultant shall, at its own expense, defend the Indemnitees against the Claims which may be brought against them, or any of them, as a result of, by reason of, or as a consequence of, the negligent act or omission of the Consultant, its subcontractors or agents, for and against which the Consultant is obligated to indemnify the Indemnitees, unless the Indemnitees, or any of them elect to conduct their own defense which, in such case, shall not relieve the Consultant of its obligation of indemnification set forth herein. If the Consultant fails to do so, the Indemnitees shall have the right, but not the obligation, to defend the same and charge the direct and incidental costs of such defense (including attorney fees and court costs) against the Consultant which is proportionate to the liability of the Consultant.

If the professional liability insurer of the Consultant does not so defend the Indemnitees and the Consultant is adjudicated to be liable by a trier of fact, the trier of fact shall award reasonable attorney's fees to be paid to the Indemnitees by the Consultant in an amount which is proportionate to the liability of the Consultant. As used in this Section, "agents" means those persons who are directly involved in and acting on behalf of the City in furtherance of this Agreement or the public work to which this Agreement pertains.

10.07 Assignment. The City and the Consultant each bind itself and its partners, successors, Managers and assigns to the other party of this Agreement and to the partners, successors, executors, Managers and assigns of such other party in respect to all covenants of this Agreement, except the Consultant shall not assign, sublet or transfer any obligation or benefit under this Agreement without the written consent of the City. Nothing contained herein shall be construed as creating any personal liability on the part of any officer or agent of the City.

10.08 Waiver. No consent or waiver, express or implied, by either party to this Agreement, or of any breach or default by the other in the performance of any obligations hereunder, shall be deemed or construed to be a consent or waiver of any other breach or default by such party hereunder. Failure on the part of any party hereto to complain of any act, or failure to act of the other party, or to declare that other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder. Inspection, payment, or tentative approval or acceptance by the City or the failure of the City to perform any inspection hereunder, shall not constitute a final acceptance of the work or any part thereof and shall not release the Consultant of any of its obligations hereunder.

10.09 Consultant Warranties. The Consultant hereby represents and warrants that:

(i) it is financially solvent, able to pay its debts as they mature, and is possessed of sufficient working capital to complete this Agreement; that it is experienced, competent, qualified and able to furnish the plant, tools, materials, supplies, equipment and labor which is used to perform the services contemplated by this Agreement, and that it is authorized to do business in the City of Las Vegas and the State of Nevada,

(ii) it holds a license, permit or other special license to perform the services included in this Agreement, as required by law, or employs or works under the general supervision of the holder of such license, permit or special license,

(iii) its computer hardware, software, and firmware will continue functioning without interruption, and will continue to accurately process date, time, and data necessary to the performance of this Agreement, and

(iv) it has, pursuant to the requirements of Resolution 79-99 adopted by the City Council on August 4, 1999, (effective October 1, 1999), as amended by resolution 105-99 (adopted by the City Council on November 17, 1999), disclosed on the form attached hereto as **Exhibit "G"** (Disclosure of Ownership/Principals) all of the principals, including partners, of the Consultant, as well as all persons and entities holding more than a one percent (1%) interest in the Consultant or any principals of the Consultant. If the Consultant, or its principals or partners, are required to provide disclosure under federal law (such as Securities and Exchange Commission or the Employee Retirement Income Act) and current copies of such federal disclosures are attached to **Exhibit "G,"** the requirements of this Section shall be deemed satisfied. During the term of this Agreement, the Consultant shall notify the City in writing of any material change in the above disclosure on **Exhibit "G"** within fifteen (15) days of such change.

10.10 Consultant's Employees. The Consultant shall be responsible for maintaining satisfactory standards of competency, conduct and integrity, of personnel assigned to the Project, and shall be responsible for taking such disciplinary action with respect to such personnel as may be necessary. In the event the Consultant fails to remove any employee from the work of this Agreement whom the City deems incompetent, careless or insubordinate, or whose continued employment on the work is deemed by the City to be contrary to the public interest, the City reserves the right to require such removal as a condition for the continuation of this Agreement.

10.11 Independent Contractor. It is hereby expressly agreed and understood that in the performance of the services required herein, the Consultant and any other person employed by him hereunder shall be deemed to be an independent contractor and not an agent or employee of the City.

10.12 Applicable Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Nevada.

10.13 Compliance with Laws. The Consultant shall in the performance of its obligations hereunder comply with all applicable laws, rules and regulations of all governmental authorities having jurisdiction over the performance of this Agreement including, without limitation, the Federal Occupational Health and Safety Act and all state and federal laws prohibiting and/or related to discrimination by reason of race, sex, age, religion or national origin.

10.14 Severability. In the event that any provisions of this Agreement shall be held to be invalid or unenforceable, the remaining provisions of this Agreement shall remain valid and binding on the parties hereto.

10.15 Confidentiality. The Consultant shall treat the information relating to the Project, which has been produced by the Consultant or provided by the City, as confidential and proprietary information of the City and shall not permit its release to other parties or make any public announcement or publicity release without the City's written authorization. The Consultant shall also require each subconsultant to comply with this requirement. The submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication relieving the Consultant of its confidentiality obligation imposed herein.

10.16 Site Inspection. The Consultant represents that it has visited the location of the Project and has satisfied itself as to the general condition thereof and that the Consultant's compensation as provided for in the Agreement is just and reasonable compensation for performance hereunder including reasonably foreseen and foreseeable risks, hazards and difficulties in connection therewith based on such above-ground observations.

10.17 Modification. All modification or amendments to this Agreement are null and void unless reduced in writing and signed by the parties hereto.

10.18 Notice. Any written notice required to be given under Sections 1.01 through 10.24 of this Agreement shall be deemed to have been given when the written notice is (i) received by the party to whom it is directed by personal service (ii) telephonically faxed to the telephone number set forth in the introductory paragraph to this Agreement, provided confirmation of the transmission is received by the sender, or (iii) deposited with the United States Postal Service, postage prepaid, addressed to the City Representative or the Consultant Representative, whomever is the proper recipient, and mailed to the address set forth in the introductory paragraph to this Agreement.

10.19 Prohibition Against Contingent Fees. The Consultant warrants that no person or entity has been employed or retained to solicit or secure this Agreement with the Agreement or understanding that a commission, percentage, brokerage or contingent fee would be paid to that person. For breach or violation of this provision, the City shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the compensation to be paid to the Consultant, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

10.20 Claim or Dispute Resolution.

A. Notice of Claim or Dispute. For each claim or dispute which the Consultant has against or with the City (except for any claim for an equitable adjustment under Section 3.02 which is subject to the 30-day limitation set forth therein), notice thereof must be submitted in writing to the City Representative within a reasonable time after the claim or dispute arises, but no later than thirty (30) days after final payment is made to the Consultant. The purpose of written notification is to place the City on notice so that proper measures can be taken to properly defend against the claim or dispute, and the failure to give such notice shall preclude the Consultant from subsequently arbitrating that particular claim or dispute pursuant to Section 10.20C of this Agreement, and the Consultant shall have no further recourse against the City. Pending a final decision on the claim or dispute under Sections 10.20B or 10.20C, the Consultant shall proceed diligently with the performance of this Agreement.

B. Resolution by Management. The City Representative and the Consultant Representative shall meet within a reasonable time after receipt of the written notice received pursuant to Section 10.20A in an attempt to resolve the claim or dispute to the mutual satisfaction of the parties. If the matter is not disposed of by mutual agreement between the City Representative and the Consultant Representative, the claim or dispute shall be decided by the Director of Public Works, whose decision shall be reduced to writing and mailed or otherwise furnished to the Consultant. The decision of the Director of Public Works shall be final and conclusive unless, within thirty (30) days after the date on which the Consultant receives its copy of such decision, the Consultant mails or otherwise furnishes to the Director of Public Works a written request to arbitrate the claim or dispute, in which event the parties shall proceed with the arbitration pursuant to provisions of Section 10.20B. The failure to make such request shall preclude the Consultant from proceeding any further on the claim or dispute, and the Consultant shall have no further recourse against the City.

C. Resolution by Arbitration. Upon receipt of the request to arbitrate authorized pursuant Section 10.03B or Section 10.20B, the City and the Consultant shall come to an agreement as to the appointment of an arbitrator for purposes of hearing the appeal. If the parties cannot reach an agreement, then each party shall select an arbitrator for purposes of the appeal, and the two shall select a third arbitrator within 20 days of their appointment. If the selected arbitrators are unable to agree upon the third arbitrator, the third arbitrator shall be selected by the American Arbitration Association or the Nevada Arbitration Association, whichever is designated by the City. Each party shall be afforded an opportunity to be heard and to offer evidence in support of or against the appeal. The decision of the arbitrator, or arbitrators, as the case may be for the determination of the appeal, shall be final, conclusive and enforceable under the laws of the State of Nevada.

D. **Right of Consolidation.** Any arbitration arising out of or relating to this Agreement may include, by consolidation, joinder or in any other manner, any additional party or parties who are not a party to this Agreement if so requested by the City or the Consultant. Any consent to arbitration involving an additional party or parties shall not constitute consent to arbitrate any claim or dispute not described as a part of the original arbitration unless otherwise agreed to by the parties.

E. **Right of Joinder.** In the event the City is named as a party to any arbitration, or the City commences an arbitration against a party other than the Consultant, which arbitration is related to, or connected with, the construction of the Project or the performance of the Consultant's services hereunder (such as, without limitation, any arbitration between the City and the contractor awarded the contract to construct the Project), the Consultant agrees and irrevocably consents to be joined as a party in the arbitration proceeding and to be bound by any decision resulting therefrom. The decision of the arbitrator or arbitrators, as the case may be, in the arbitration to which the Consultant has been joined as a party, shall be binding and enforceable against the parties thereto under the laws of the State of Nevada.

If the Consultant is named as an additional party by the City, the Consultant shall not be entitled to any additional compensation from the City as a result of preparing for, and participating in, the arbitration.

F. **Discovery.** In the event of arbitration, the parties agree that all means of discovery including, but not limited to, depositions and interrogatories, will be afforded to the parties involved in the arbitration, and the appointed arbitrator shall have all authority to impose sanctions against either party for failing to comply with the rules of discovery provided under the Nevada Rules of Civil Procedure.

G. **Award Final.** The award rendered by the arbitrator shall be final, and judgment may be entered upon its accordance with applicable law in any court having jurisdiction thereof.

H. **Mediation.** Subsequent to the commencement of any arbitration pursuant to Section 10.20C, and prior to any decision arising therefrom, the parties may endeavor with written mutual consent to settle disputes by mediation in accordance with the mediation rules of the mediation service agreed by the parties. The cost of the mediation shall be shared equally by the parties.

10.21 **Attorney Fees.** The prevailing party in any litigation or arbitration brought to enforce the provisions of this Agreement shall be entitled to reasonable attorney fees and court costs.

10.22 **Calendar Day.** All references in this Agreement to days are to calendar days unless otherwise indicated.

10.23 **Exhibits.** All exhibits referenced in this Agreement are hereby incorporated by this reference as a part of this Agreement. Any conflict between the provisions of this Agreement and the Exhibits incorporated herein shall be governed by the provisions of this Agreement.

10.24 **Counterparts; Electronic Delivery.** This Agreement may be executed in counterparts, all such counterparts will constitute the same contract and the signature of any party to any counterpart will be deemed a signature to, and may be appended to, any other counterpart. Executed copies hereof may be delivered by facsimile or e-mail and upon receipt will be deemed originals and binding upon the parties hereto, regardless of whether originals are delivered thereafter.

10.25 **Agreement Version.** This document incorporates the standard provisions for the City's Professional Services Agreement updated as of April 8, 2008.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

CITY OF LAS VEGAS

By _____
Kathleen C. Rainey, Manager
Purchasing & Contracts

ATTEST

Beverly K. Bridges, MMC
City Clerk

Date

CONSULTANT

By _____
Ken D. Gilbreth, P.E., Principal, VTN Nevada

APPROVED AS TO FORM

John S. Rishella 11/13/09
Deputy City Attorney Date

LIST OF EXHIBITS

- EXHIBIT " A " SCOPE OF SERVICES**
- EXHIBIT " B " REQUIRED SUBMITTALS**
- EXHIBIT " C " PERFORMANCE SCHEDULE**
- EXHIBIT " D " FEE BREAKDOWN**
- EXHIBIT " E " ADDITIONAL COMPENSATION**
- EXHIBIT " F " KEY PERSONNEL LIST**
- EXHIBIT " G " DISCLOSURE OF OWNERSHIP/PRINCIPALS**

EXHIBIT "A"

SCOPE OF SERVICES

Article I: General

- 1.1 The construction management services covered by the Agreement between the City of Las Vegas (CITY) , and VTN Nevada, (the "Consultant"), involve construction management services for the **North & South Environmental Enhancement Areas at Floyd Lamb Park** (herein the "Project"); The Scope of Services shall include:

- **CONSTRUCTION MANAGEMENT AND INSPECTIONS**
- **ENVIRONMENTAL COORDINATION**
- **QUALITY CONTROL MATERIAL TESTING**
- **PROJECT CLOSEOUT**

1.2 **DESCRIPTION OF PROJECT**

The work to be performed under this contract is located within the City of Las Vegas Floyd Lamb Park, on Racel Street between Cimarron Road and El Capitan Way, and El Capitan Way between Racel Street and Horse Drive. The project includes construction of two environmental enhancement areas within Floyd Lamb Park, a storm drain within the rights-of-way of Racel Street and El Capitan Way, and widening of El Capitan Way from Racel Street to approximately 375 feet north of Racel Street.

The North Environmental Enhancement Area (NEEA) is located at the northeast corner of Iron Mountain Road near Buffalo Drive, and the Southern Environmental Enhancement Area (SEEA) is located at the northwest corner of Racel Street and Conough Lane. Facilities to be constructed in association with the NEEA and the SEEA.

Article II: Description of Services

2.1 **CONSTRUCTION MANAGEMENT AND INSPECTIONS**

Consultant will be required to provide full service construction management, inspection and material testing for this project. Consultant will be responsible for providing staff, documentation and all necessary equipment needed to provide the scope of services outlined below, within the hours and fee negotiated for the project.

BASIC REQUIREMENTS

1. Vehicles used on the Project by the Consultant's representatives shall be conspicuously marked so as to identify personnel of the Consultant for the benefit of the public.
2. The Consultant shall provide a cellular telephone to facilitate communication with the City and the public.
3. Provide computer and communications systems required to manage the project.
4. The Consultant shall provide a copy of their policy and procedure manual for construction management for review and approval to use on the project.

STAFFING REQUIREMENTS

1. The consultant shall provide a qualified Construction Manager to be in responsible control of the Project. The Construction Manager shall possess an active Contractors license, Professional Civil Engineer license, or Architecture registration in the State of Nevada pursuant to NRS 624, 625 and 623, respectively. The Construction Manager shall have, at a minimum, 4 years of post-licensure/registration, progressively responsible experience in managing and administering large construction projects, preferably on public sector construction projects of similar size and scope to the project.

NOTE: Responsible control is defined, at a minimum, as weekly field observation of the Project and supervision of staff's work. The Construction Manager is required to review pertinent project documents to ensure the success of the project.

2. The Consultant shall provide a qualified Construction Coordinator to oversee the daily construction administration, inspection and testing for the Project and to ensure timely submissions and processing of Project documents. The Construction Coordinator shall possess, at a minimum, one of the following:
 - A four year college degree in Architecture, construction management or engineering discipline; or
 - Possess a CCMA, PMI, or any nationally recognized construction management program certification in lieu of a four year college degree; or
 - An equivalent combination of relevant education, training and construction experience totaling 10 years in construction project management under the supervision of a licensed Contractor, Professional Civil Engineer, or Registered Architect.
3. The Consultant shall provide a qualified Construction Inspector to perform inspections as necessary to ensure the contractor(s) work is in compliance with the Project plans and specifications. The Construction Inspector shall possess certification(s) in one or more of the following: NICET, ICC, ICBO or ACI Field Inspector or any national recognized inspection program, preferably in a specialty related to the scope of work of the Project.
4. Document Control – The Consultant shall provide an experienced person to assist the Construction Coordinator in preparing and maintaining all correspondence and documents (i.e. submittals, daily reports, requests for information, change orders, etc.) required by this agreement. All reports shall be provided in Expedition format (Version 10.1 or higher). Other document control software may be allowed if approved in advance by the Owner.
5. Material Testing – The Consultant will provide or subcontract to an AASTHO certified lab to provide quality control testing and inspection during construction. The Consultant will be responsible for reviewing documentation including test reports to ensure compliance with the contract documents.

The Owner will require a resume for each staff person assigned to the Project, including proof of licensure, registration, and /or certifications. In addition to the resume, the Owner may require references, request an in-person interview, or other means to confirm qualifications and experience of proposed Project staff. The determination of the qualification of proposed Project staff shall be at the sole discretion of the Owner. Any proposed Project staff that do not meet the aforementioned qualifications and experience requirements shall be promptly replaced with staff acceptable to the Owner.

PRE-CONSTRUCTION

1. The Consultant shall:
 - Perform a review of the Plans and Specifications.
 - Perform a follow-up review of the geotechnical report.
 - Review the Contractor's Dust Permit for Construction Contract compliance.
 - Review the Contractor's Dust Mitigation Plan for Construction Contract compliance.
 - Review the Contractor's Storm Water Permit for Construction Contract compliance.
 - Forward any comments to the City Project Representative.
2. The Consultant shall participate in periodic "Partnering Meetings" with the City and the Construction Contractor for discussion of shared goals, processes, and procedures during the construction process, which shall be attended by a Consultant team member who has high-level decision-making authority, and require the same in all subconsultant contracts. Meeting dates, times, and place will be determined by the City.

AGENCY COORDINATION

1. Coordinate with other agencies and City staff on all aspects of the project. Prepare, as required, an initial, non-exclusive list of submittals required on the project. Provide such list to the Contractor and the City as requested.
2. Keep Agencies informed of the City's public information program.
3. Attend preconstruction meetings, progress meetings, job conferences, and other related meetings including public information meetings. Take and distribute minutes of all such meetings.

UTILITY COORDINATION

1. Monitor any utility work required on this project.

PROJECT CONTROL

1. Create and maintain, on the City of Las Vegas' Primavera software (V10.1) accessed via an internet connection, daily reports, submittals, requests for information, field directives, change Orders and any other contract documents.
2. Keep a daily report of the Contractor's working and non-working hours on the project site, weather conditions, date relative to questions of extras or deletions, suppliers and distributors, equipment used and idle, daily quantities, daily activities, and in more detail as in the case of observing test procedures.
3. Track and analyze all project issues disputes and claims .
4. Monitor bid quantities for overruns, notify the City representative if quantities are exceeding the bid amount.
5. Provide videotape and photographic documentation of Project Site, on CD ROM, prior to and during construction, and make special note of any pertinent situation.
6. Maintain a list of names, addresses, and emergency telephone numbers of all contractors, subcontractors, agencies, and major suppliers of materials and equipment and provide an up-to-date list to the City Representative
7. Attend, chair and record minutes of all progress meetings.
8. Review and verify monthly and final estimates for payments to the Contractor, and ensure that all invoices reflect actual work completed in accordance with the Contract Documents and furnish to the City any necessary certifications as to payments to construction Contractors and suppliers.
9. Prepare and maintain all documents required to meet regulations. Upon completion of the project, the Consultant will provide the City with all files for their records in accordance with Project Closeout process.

MONITOR CONSTRUCTION SCHEDULE

1. Consultant's construction coordinator will review the construction baseline schedule for conformance to the contract requirements.
2. Construction coordinator will review the updated schedules during the course of construction for slippage's, logic revisions, and other changes. All changes to the schedule will be reported to the City within ten (10) working days. The Consultant will provide a monthly written analysis report of the contractor's baseline and monthly update schedule.
3. Consultant will maintain an "as-built" schedule as work progresses.
4. If necessary, the Consultant will work with the contractor to provide a recovery schedule.

ISSUE MANAGEMENT

1. During the course of construction, Consultant will identify, and notify immediately, any items that have the potential to result in additional project time or cost impact as issues.
2. Consult with and advise the City, as to possible change orders, issue all instruction to the Contractor requested by the City, and prepare such change orders.
3. Report immediately to the City upon the occurrence of any accident on the Project and document information observed.
4. Monitor the Contractor's compliance with the approved NPDES permit and applicable Best Management practices; issue Notices of Non-Compliance and/or notify the applicable enforcement agency, as appropriate.
5. Work with the contractor to resolve issues.
6. Work with homeowners, businesses and the public at large to resolve issues and provide updated information as required to give notice of upcoming work activity that may impact them.

TRAFFIC CONTROL

1. Consultant staff will perform daily traffic zone review for compliance with approval of barricade plans.
2. Maintain copies of approved barricade plans.

REFERENCE MATERIAL

The following reference materials, as applicable, shall be used as standards for inspection work performed under this Agreement:

1. Design and Construction Standards for Wastewater Collection Systems from Clark County Water Reclamation District (formally Clark County Sanitation District)
2. Nevada Department of Transportation (NDOT) references (most current editions):
 - a. Road Design Division Manual, Parts 1 & 2.
 - b. Standard Specifications for Road and Bridge Construction (NDOT Silver book).
 - c. Standard Plans for Road and Bridge Construction.
 - d. Standard Construction Plan Symbols and Design Layout and Drafting Methods
 - e. Bridge Design and Procedures Manual
 - f. Nevada Work Zone Traffic Control Handbook
 - g. Design and Construction Standards for Wastewater Collection
3. Manual on Uniform Traffic control Devices for Streets and Highways (MUTCD)
4. Traffic Control Devices Handbook
5. Roadside Design Guide
6. American Society for Testing and Materials (ASTM)
7. A Policy on Geometric Design and Highway and Streets (AASHTO)
8. Clark County Regional Flood Control District's Policies and Procedures.
9. Clark County Regional Flood Control District's Hydrologic Criteria and Drainage Design Manual
10. Uniform Standards Plans and Specifications for Public Work's Construction Off-Site Improvements, Clark County Area (Standard Specifications)
11. American Concrete Institute (ACI)
12. The Asphalt Institute
13. Portland Cement Association (PCA)

2.2 ENVIRONMENTAL COORDINATION

1. Environmental Subconsultant will provide a worker environmental protection education program to include:
 - Educational Brochure – burrowing owl and desert tortoise protection measures.
 - Worker Education briefings: provided at pre-construction conference and by on site field biological monitor as a "tailgate" briefing.
2. Environmental Subconsultant to provide biological monitoring of construction site for desert tortoises and burrowing owls. Shall follow recommendations contained in the environmental assessment entitled "Floyd Lamb Park at Tule Springs Environmental Enhancement Areas dated March 2008".
3. Environmental Subconsultant to provide paleontological monitoring of construction. Data recovery and field preparation to preserve fossilized specimens.
4. Environmental Subconsultant to provide written report to US Fish and Wildlife Service on results of biological monitoring, and a written report to Clark County Regional Flood Control District on results of paleontological monitoring.

2.3 QUALITY CONTROL MATERIAL TESTING

The Consultant, or subconsultants, will be required to provide full service material testing and quality control testing during construction. The Consultant, or subconsultant, will be responsible for providing staff and documentation to ensure compliance with the contract documents.

SAMPLING AND TESTING CRITERIA:

FIELD TESTING

The Consultant will be responsible for providing field testing through its sub-consultant for soil, aggregate, concrete, and asphalt, required by the contract documents.

The Consultant will be responsible for reviewing and maintaining all field-testing data and reports for contract compliance

LABORATORY TESTING

The Consultant will be responsible for providing laboratory testing through its sub-consultant for soil, aggregate, concrete, asphalt, and pipe lining required by the contract documents.

The Consultant will be responsible for maintaining all source testing data and reports, including retesting of any and all failed tests.

LABORATORY TEST RESULTS

Soil Tests

- a. The Consultant (or sub-consultant) shall perform relative compaction test of subgrade, aggregate base grade and trench backfill for verification of compliance with the project specifications when directed by the City and follow testing frequencies as shown in Item 4 – Testing Requirements. Test results shall be reviewed and delivered to the City's Representative prior to the Consultant leaving the construction site daily.
- b. The Consultant shall retrieve samples from the project site and perform laboratory Moisture Density tests when requested by the City. Test results shall be delivered to the City or its Agent within 2 working days following samples being retrieved from the project site.
- c. The Consultant shall retrieve samples from the project site and perform laboratory Sieve Analysis tests when requested by the City. Test results shall be delivered to the City or its Agent within 2 working days following samples being retrieved from the project site.
- d. The Consultant shall retrieve samples from the project site and perform laboratory R-Value tests when requested by the City. Test results shall be delivered to the City or its Agent within 3 working days following samples being retrieved from the project site.
- e. The Consultant shall retrieve samples from the project site and perform laboratory Percent of Wear tests when requested by the City. Test results shall be delivered to the City or its Agent within 2 working days following samples being retrieved from the project site.
- f. The Consultant shall retrieve samples from the project site and perform laboratory Plasticity Index tests when requested by the City. Test results shall be delivered to the City or its Agent within 2 working days following samples being retrieved from the project site.
- g. The Consultant shall retrieve samples from the project site and perform laboratory Sulfate Content tests when required by the City. Test results shall be delivered to the City or its Agent within 3 working days following samples being retrieved from the project site.

Concrete Tests.

- h. The Consultant (or Sub-consultant) shall perform on-site slump, temperature, air content, determination of unit weight and consistency tests for verification of compliance with the project specifications when directed by the City. Test results shall be delivered to the City's Representative prior to the Consultant leaving the construction site daily.
- i. The Consultant shall prepare a minimum of 4 test cylinders on the project site at the time of concrete placement and perform laboratory compressive strength tests when requested by the City. Cylinders shall be cured on-site in a cure box supplied by the Consultant, for a period of 24 hours before removal. Results shall be delivered to the City within 2 working days following each cylinder being tested.

Asphaltic Concrete.

- j. The Consultant (or sub-consultant) shall perform on-site density tests by utilizing "Density of Bituminous Concrete in Place by Nuclear Method" ASTM D 2950 methodology at the time of asphaltic concrete placement for verification of compliance with the project specifications when directed by the City. Test results shall be delivered to the City's Representative prior to the Consultant leaving the construction site daily.
- k. The Consultants shall retrieve samples from the project site and perform laboratory Extraction/Gradation tests when requested by the City. Test results shall be delivered to the City within 2 working days following samples being retrieved from the project site.
- l. The Consultant shall retrieve samples from the project site and perform laboratory Maximum Theoretical Specific Gravity tests utilizing the Rice methods, when requested by the City. Test results shall be delivered to the City within 2 working days following samples being retrieved from the project site.
- m. The Consultant shall retrieve samples from the project site and perform laboratory Unit Weight and Thickness tests when requested by the City. Test results shall be delivered to the City within 2 working days following samples being retrieved from the project site.
- n. The Consultant shall retrieve samples from the project site and perform laboratory Marshall Series tests when requested by the City. Test results shall be delivered to the City within 3 working days following samples being retrieved from the project site.

Testing Requirements: The following requirements for material control is included herein as reference and incorporated into the scope of work. The Consultant (or sub-consultant) shall be responsible for the following testing methodology.

- o. **Trench Backfill** – Material sampled shall be tested in accordance with the test method and frequency indicated:

Control Test	Test Method	Frequency
Maximum Density/Opt. Moisture	AASHTO T180	1 per soil type
Sieve Analysis	AASHTO T27	1 per soil type
Plasticity Index	AASHTO T89 & T90	1 per soil type
Liquid Limit	AASHTO T89	1 per soil type

- p. **Subgrade Material** – Material sampled shall be tested in accordance with the test method and frequency indicated:

Control Test	Test Method	Frequency
Maximum Density/Opt Moisture	AASHTO T180	1 per soil type, Minimum 2
Sieve Analysis	AASHTO T27	1 per soil type, Minimum 2
Plasticity Index	AASHTO T89 & T90	1 per soil type, Minimum 2
Liquid Limit	AASHTO T89	1 per soil type, Minimum 2

- q. **Type II Aggregate Base** – Material sampled shall be tested in accordance with the test method and frequency indicated

Control Test	Test Method	Frequency
Maximum Density/Opt Moisture	AASHTO T180	1 per supplier
Sieve Analysis	AASHTO T27	1 per supplier
Fractured Faces	Nev T230	1 per supplier
Plasticity Index	AASHTO T89 & T90	1 per supplier
Liquid Limit	AASHTO T89	1 per supplier
Resistance (R-Value)	AASHTO T190	1 per supplier
Percent of Wear (500 Rev.)	AASHTO T96	1 per supplier

- r. **Portland Cement Concrete** – Concrete cylinders shall be cast and tested in accordance with ASTM. Material shall be sampled and tested as indicated

s. Portion of Work	Sampling Frequency	No. of Cylinders/ Break Days
Sidewalk	1 set per 1000 LF per day	(4)/7, 14, 28
Curb and Gutter	1 set per 1000 LF per day	(4)/7, 14, 28
Crossgutter	1 set per 1000 LF per day	(4)/7, 14, 28
Misc. Structures	1 set per structure per day	(4)/7, 14, 28
Driveways	1 set per driveway	(4)/7, 14, 28

- t. **Bituminous Pavement** – Material sampled during paving operation shall be tested in accordance with ASTM using Marshall Apparatus as indicated:

Relative Compaction Testing

The following requirements for Relative Compaction Testing are included herein as referenced and incorporated into the scope of work. The Consultant shall be responsible for the following field relative compaction tests.

- a. **Trench Backfill** – Backfill shall be tested as indicated:
- One (1) test per lift per 100 lineal feet of trench or a minimum of two (2) tests per day.
 - One (1) test per lateral.
 - A minimum of two (2) mainline tests between structures.

- b. **Structure Backfill** – Backfill shall be tested as indicated:
 - 1. One (1) test per lift per structure or a minimum of one (1) test per day.
 - 2. A minimum of one (1) test per structure.
- c. **Subgrade** – Subgrade shall be tested as indicated:
One (1) test per 300 to 500 lineal feet per lane (12') width) or a minimum of two (2) tests per street.
- d. **Type II Aggregate Base** – Aggregate base shall be tested as indicated:
One (1) test per 300 to 500 lineal feet per lane (12') width) or a minimum of two (2) tests per street.
- e. **Curb and Gutter** – Aggregate base and subgrade shall be tested as indicated:
One (1) test per 500 lineal feet of curb and gutter or curb or a minimum of two (2) per street.
- f. **Crossgutter** – Aggregate base and subgrade shall be tested as indicated:
Two (2) tests per complete crossgutter.
- g. **Sidewalk** – Aggregate base and subgrade shall be tested as indicated:
One (1) test per 500 lineal feet of sidewalk or a minimum of one (1) per street.
- h. **Driveways** – Aggregate base and subgrade shall be tested as indicated:
 - 1. Residential – one (1) test per complete driveway.
 - 2. Commercial/Alley – two (2) tests per complete driveway.
- i. **Hot plantmix bituminous pavement** – place field density testing of hot bituminous pavement per ASTM D2950 (Nuclear Gauge Method) shall be performed as indicated:
 - 1. A minimum of five (5) locations per day.

2.4 PROJECT CLOSEOUT – REQUIRED FOR ALL PROJECTS

The Consultant will responsible for closing out the project and delivering a complete project record to the City as identified in this agreement.

- 1. Upon completion of the Project, review the project for conformance with the Contract Documents, present written recommendations to the City, thirty (30) days after completion, as to the acceptance of the project by the City and approve in writing final payments to the Construction Contractor.
- 2. Evaluate claims by the Contractor or other Subcontractors and make recommendations concerning each to the City.
- 3. Following the issuance of Notice of Completion, the Consultant will deliver to the City, thirty (30) days after Notice of Completion, a complete project record as described in this agreement.
- 4. The Consultant will deliver all electronic and Expedition files on computer disk (CD) and hard copy.
- 5. The Consultant shall submit a final report, thirty (30) days after Notice of Completion, containing all test results, stamped and sealed by a Nevada professional Engineer.
- 6. Coordinate the delivery of all "As-Built" drawings to the City.
- 7. The Consultant shall submit the State Engineer Dam Safety Permission to Impound submittal package.
- 8. Complete contractor evaluation form.

END OF EXHIBIT "A"

EXHIBIT "B"

REQUIRED SUBMITTALS

ARTICLE 1: GENERAL

1.1 For the services set forth in Exhibit "A" (Scope of Services), the Consultant shall provide construction management information as requested by the City of Las Vegas. Reference the entire Agreement and other Exhibits for additional Consultant submittals, and documents to be forwarded from the Contractor.

1.2 All reports shall be on white acid-free paper, 8-1/2 x 11 inches, suitable for photocopying and bound in booklet form. It is understood that the City may make and distribute copies of the reports as necessary in connection with the Project without incurring obligation for additional compensation.

ARTICLE 2: CONSTRUCTION PHASE – MONTHLY INVOICES

2.1 Together with the Consultant's monthly invoice for services, provide copies of the following documents: Monthly payments to the contractor reviewed and verified by the consultant, pictures of construction activities, narrative of the monthly activities and progress, logic revisions to the project schedule, Project Logs (as a minimum include: Submittal, Request for Information, Change Order and Conflict Tracking) and certified payrolls from the contractor for the period covered by the invoice:

2.1.1 Current Schedule of construction progress in both paper and Microsoft Project, P6 (or approved equal) electronic file format.

ARTICLE 3: CLOSE-OUT PHASE – FINAL PAYMENT

3.1 Together with the Consultant's invoice for final payment, or upon termination of this Agreement for any reason, provide:

3.1.1 A final Project summary report.

3.1.2 All original documents (excluding Architectural plans and specifications as dictated by NRS 623) including photographs and negatives, or printed copies and electronic files if digital, relating to the Project produced during the term of this Agreement. Provide electronic files of all documents that are electronically produced or stored. Organize and label all documents in containers.

3.1.3 The Construction Inspectors Daily Reports, with original signature.

3.1.4 The Consultant's daily photographs, labeled and dated.

3.1.5 Electronic copy of the Expedition database containing all Project documents generated to date.

END OF EXHIBIT "B"

EXHIBIT "C"

PERFORMANCE SCHEDULE

ARTICLE 1: GENERAL

1.1 For the services set forth in Exhibit "A" (Scope of Services), the time schedule for performance of the Consultant's work begins with the date of this Agreement. Services shall be performed by the Consultant in an expeditious manner so as to not delay the progress of the Project, and in accordance with the time requirements described elsewhere in this Agreement.

ARTICLE 2: LATE AND EARLY COMPLETION

2.1 The Consultant's Total hourly Fee for the services set forth in Exhibit "A" (Scope of Services) is based on a construction term of 21 months for the Contractor to achieve Final Completion of the Project.

2.2 If the construction schedule is reduced or exceeded, the Consultant's compensation shall be adjusted in accordance with Exhibit "E" (Additional Compensation) as an Additional Service, which shall be agreed to in writing prior to rendering the Additional Services.

EXHIBIT "C"

Continued

Duties	Dec-09	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	TOTAL HOURS
Construction Manager	100	180	180	180	180	180	180	180	180	180	180	180	180	180	180	180	180	180	180	180	180	3520
Construction Coordinator	0	180	180	180	180	180	180	180	180	180	180	180	180	180	180	180	180	180	180	180	180	3520
Inspector	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3420
Inspector (Budgetary)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2700
Inspector	80	180	180	180	180	180	180	180	180	180	180	180	180	180	180	180	180	180	180	180	180	3450
Document Control	80	180	180	180	180	180	180	180	180	180	180	180	180	180	180	180	180	180	180	180	180	3550
																						0
																						0
																						10880.0

END OF EXHIBIT "C"

EXHIBIT "D"

FEE BREAKDOWN

ARTICLE 1: FEE

1.1 TOTAL COMPENSATION

The total compensation to be paid to the Consultant for performance of this Agreement including Basic Services, Additional Services, and Reimbursable Expenses shall not exceed \$3,000,000. This amount is comprised of the parts described in this Exhibit "D" (Fee Breakdown).

1.2 BASIC SERVICES PAYMENT BASED ON SALARY MULTIPLIER

For the services set forth in Exhibit "A" (Scope of Services), the City agrees to pay to the Consultant as follows:

Compensation for the services provided herein will be made on the basis of the employees' base salary cost times a multiplier of (3.00) which covers all labor and project related expenses and profit (subconsultants), plus reimbursement of subconsultant services at invoice cost plus 5 percent markup. Payment shall be made pursuant to monthly invoices submitted in accordance with the agreement.

1.3 BASIC SERVICES COMPENSATION

The total compensation to be paid to the Consultant for performance of this Agreement including Basic Services and Reimbursable Expenses as set forth in Exhibit A shall not exceed \$2,532,640. This price assumes a 21 month schedule for services per Exhibit D- . Any services extending beyond 21 months will be covered by additional services as authorized by City.

This project will be managed from Consultants field office at 2727 South Rainbow Boulevard. The Consultants Staff (RE and Inspector) will each be equipped with a vehicle and cell phone, office supplies such as computers, printers, copiers, fax machines, and other "typical" office supplies will be supplied by the corporate office and included as part of the Services set forth in Exhibit "A".

ALLOWANCE FOR ADDITIONAL SERVICES

A Not-To-Exceed Allowance for Additional Services is hereby established as set forth below. The City Representative has authority to pre-authorize in writing Additional Services up to the Total Not-To-Exceed Cost. Services performed prior to receiving the required written authorization or in excess of the Total Not-To-Exceed Cost shall not be obligated for compensation.

Additional Services are services that are not set forth in Exhibit "A" (Scope of Services).

The Consultant shall be compensated for Additional Services in accordance with the Additional Services fees set forth in Exhibit "E" (Additional Compensation), or if no Additional Service fee has been established for the service, in accordance with the Consultant Hourly Rates established in Exhibit "E" (Additional Compensation). Additional Service compensation disputes shall be resolved in accordance with the claims and disputes provisions of this Agreement and shall not be cause for the Consultant to delay providing requested services. Payment shall be made for each completed Additional Service pursuant to invoices submitted in accordance with the Agreement.

Increases to this Total Not-To-Exceed Cost for Additional Services may only be authorized by written amendment to this Agreement.

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EXHIBIT "E"

ADDITIONAL COMPENSATION

ARTICLE 1: CONSULTANT HOURLY RATES

ARTICLE 2: ADDITIONAL SERVICES

- 2.1 The cost of the following potential future Additional Services have been negotiated as of the date of this Agreement.

Hourly Labor Rates	
Construction Manager	\$180.00
Project Manager	\$175.00
Construction Coordinator	\$130.00
Construction Inspector 1	\$130.00
Construction Inspector 2	\$115.00
Construction Inspector 3	\$85.00
Document Control	\$70.00
Survey Crew	\$215.00
Tortoise/Owl Monitoring	\$80.00
Paleontological Monitoring	\$100.00

Laboratory Rates	
M/D Relationship	\$246.00
Sieve Analysis	\$142.00
Plastic Limits	\$123.00
Percentage Wear	\$225.00
R-Value	\$338.00
Fractured Faces	\$110.00
Sand Equivalent	\$155.00
Extraction Gradation	\$336.00
Moisture Content	\$30.00
Theoretical Max SpG	\$114.00
Bulk SpG-Compacted Mix (2)	\$228.00
Marshall-Stability and Flow (2)	\$630.00
Retained Tensile Strength (3)	N/A
Bulk SpG-Cores (2)	\$136.00
Concrete Compressive Strength (4)	\$92.00
Concrete Compressive Strength (6)	\$138.00
Rip-Rap SpG	\$114.00
Rip-Rap Percentage Wear	\$218.00

- 2.2 Additions or reductions in services due to an extension or reduction of time to the construction schedule indicated in **Exhibit "C"** (Performance Schedule) shall be based on the pro-rata share of the Monthly Rate shown herein.
- 2.3 These fees are valid for the duration of the Project and include salary costs, equipment, overhead, administration and profit. For Additional Services of sub-consultants, the City shall compensate the Consultant with a 5% mark up on Geotechnical Services invoiced to the Consultant for such services.

END OF EXHIBIT "E"

EXHIBIT "F"

KEY PERSONNEL LIST

CITY PERSONNEL

CITY REPRESENTATIVE: Jeff Galambas, P.E.

CONSTRUCTION MANAGER'S PROJECT STAFF

The following personnel will be assigned by to work on the Project. Any changes require City approval.

CONSTRUCTION MANAGER REPRESENTATIVE: Ken Gilbreth, P.E.

OTHER PERSONNEL: Construction Coordinator – Clint Stay
Project Manager – Mike Leeper

RESPONSIBLE IN CHARGE PERSON (Mandatory under NRS 338 CM as Agent): Ken Gilbreth, P.E.

IN CHARGE PERSON'S STATE OF NEVADA LICENSE NUMBER (Mandatory under NRS 338 CM as Agent): Ken Gilbreth, P.E.

CONSTRUCTION MANAGER'S SUBCONSULTANTS

The following subconsultants will be contracted with and utilized by the Construction Manager to work on the Project. Any changes require City approval.

Materials Testing: GeoTek
Environmental: NewFields

END OF EXHIBIT "F"

**EXHIBIT G
CERTIFICATE
DISCLOSURE OF OWNERSHIP/PRINCIPALS**

1. Definitions

"City" means the City of Las Vegas.

"City Council" means the governing body of the City of Las Vegas.

"Contracting Entity," means the individual, partnership, or corporation seeking to enter into a contract or agreement with the City of Las Vegas.

"Principal" means, for each type of business organization, the following: (a) sole proprietorship – the owner of the business; (b) corporation – the directors and officers of the corporation; but not any branch managers of offices which are a part of the corporation; (c) partnership – the general partner and limited partners; (d) limited liability company – the managing member as well as all the other members; (e) trust – the trustee and beneficiaries.

2. Policy

In accordance with Resolution 79-99 and 105-99 adopted by the City Council, Contracting Entities seeking to enter into certain contracts or agreements with the City of Las Vegas must disclose information regarding ownership interests and principals. Such disclosure generally is required in conjunction with a Request for Proposals (RFP). In other cases, such disclosure must be made prior to the execution of a contract or agreement.

3. Instructions

The disclosure required by the Resolutions referenced above shall be made through the completion and execution of this Certificate. The Contracting Entity shall complete Block 1, Block 2, and Block 3. The Contracting entity shall complete either Block 4 or its alternate in Block 5. Specific information, which must be provided, is highlighted. An Officer or other official authorized to contractually bind the Contracting Entity shall sign and date the Certificate, and such signing shall be notarized.

4. Incorporation

This Certificate shall be incorporated into the resulting contract or agreement, if any, between the City and the Contracting entity. Upon execution of such contract or agreement, the Contracting Entity is under a continuing obligation to notify the City in writing of any material changes to the information in this Certificate. This notification shall be made within fifteen (15) days of the change. Failure to notify the City of any material change may result, at the option of the City, in a default termination (in whole or in part) of the contract or agreement, and/or a withholding of payments due the Contracting Entity.

Block 1 Contracting Entity

Name: VTN Nevada

Address: 2727 S Rainbow Blvd
Las Vegas, NV 89146
Telephone: 702-247-4020

EIN or DUNS

Block 2 Description

**North and South Environmental Enhancement Areas
of Floyd Lamb Park**

RFP#

Block 3

Type of Business

☐ Individual ☐ Partnership ☐ Limited Liability Company ☒ Corporation ☐ Trust ☐ Other:

EXHIBIT G - Continued
CERTIFICATE – DISCLOSURE OF OWNERSHIP/PRINCIPALS
(CONTINUED)

Block 4 Disclosure of Ownership and Principals

In the space below, the Contracting Entity must disclose all principals (including partners) of the Contracting Entity, as well as persons or entities holding more than one-percent (1%) ownership interest in the Contracting Entity.

	FULL NAME/TITLE	BUSINESS ADDRESS	BUSINESS PHONE
1.	Gene Krametbauer, PLS	2727 S Rainbow Blvd. Las Vegas, NV 89146	702-873-7550
2.	Ken Gilbreth, PE	2727 S Rainbow Blvd. Las Vegas, NV 89146	702-247-4020
3.	James Thomas, PE	2727 S Rainbow Blvd. Las Vegas, NV 89146	702-873-7550
4.	Michael Leeper	2727 S Rainbow Blvd. Las Vegas, NV 89146	702-247-4020
5.	Christopher Grubbs, PE	2727 S Rainbow Blvd. Las Vegas, NV 89146	702-873-7550
6.	Robert Hosea, PE	2727 S Rainbow Blvd. Las Vegas, NV 89146	702-873-7550
7.	Daniel Hood, PE	2727 S Rainbow Blvd. Las Vegas, NV 89146	702-873-7550
8.	Anthony Zicari, PLS	2727 S Rainbow Blvd. Las Vegas, NV 89146	702-873-7550

The Contracting Entity shall continue the above list on a sheet of paper entitled "disclosure of Principals – Continuation" until full and complete disclosure is made. If continuation sheets are attached, please indicate the number of sheets: ____.

Block 5 DISCLOSURE OF OWNERSHIP AND PRINCIPALS – ALTERNATE

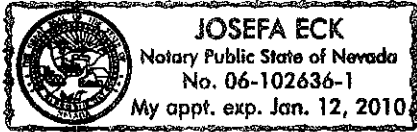
If the Contracting Entity, or its principals or partners, are required to provide disclosure (of persons or entities holding an ownership interest) under federal law (such as disclosure required by the Securities and Exchange Commission or the Employee Retirement Income Act), a copy of such disclosure may be attached to this Certificate in lieu of providing the information set forth in Block 4 above. A description of such disclosure documents must be included below.

Name of Attached Document: _____

Date of Attached Document: _____ Number of Pages: _____

EXHIBIT G - Continued

I certify under penalty of perjury, that all the information provided in this Certificate is current, complete and accurate. I further certify that I am an individual authorized to contractually bind the above named Contracting Entity



[Signature]
Name
10-12-09
Date

Subscribed and sworn to before me this 12th day of

October, 2009

[Signature: Josefa Eck]
Notary Public